



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2004

Mr. P. Steven Kosub
San Antonio Water System
Corporate Counsel for Water Resources
P.O. Box 2449
San Antonio, Texas 78298-2449

Ms. Susan C. Rocha
Denton, Navarro, Rocha & Bernal, P.C.
2517 North Main Avenue
San Antonio, Texas 78212

OR2004-8179

Dear Mr. Kosub and Ms. Rocha:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209862.

The San Antonio Water System (the "system") received four requests from the same requestor for a specified Water Availability Model. You assert that the requested information is the subject of Open Records Letter No. 2004-4403 (2004), issued May 28, 2004. In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.107, 552.110, 552.111, and 552.113 of the Government Code. You also state, and provide documentation showing, that you notified interested third parties of the request and of their right to submit arguments to this office as to why the information should not be released.¹ See Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have

¹You indicate that the following third parties have been notified pursuant to section 552.305: HDR Engineering, Inc.; San Antonio River Authority; and URS Corporation.

reviewed the submitted information. We have also considered comments submitted by the requestor and other members of the public. *See* Gov't Code § 552.304 (providing that member of public may submit comments stating why information should or should not be released).

You assert that the requested information is subject to a previous determination of this office issued as Open Records Letter No. 2004-4403 (2004) on May 28, 2004. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Public Information Act (the "Act"); and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). Based upon your representations and our review of the submitted information, we determine that the present request arises under the same facts and circumstances at issue in Open Records Letter No. 2004-4403. Consequently, we determine that the system may continue to follow our ruling in Open Records Letter No. 2004-4403 with respect to the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 209862

Enc. Submitted documents

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